CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

F. ROBERT STRAHM,	)	**Case No. 06-3-0033**
	)	
Petitioners,	)	
	)	***(Strahm III)***
v.	)	
	)	
CITY OF EVERETT,	)	**FINAL DECISION and ORDER**
	)	
Respondent.	)	
	)	

SYNOPSIS

In 2005, the City of Everett completed its Plan Update, revising its Citywide Plan. The Citywide Plan contained the required Land Use Element and Housing Element, including Housing Strategy Areas, which provide the context for the Citywide Plan in the present appeal. The Citywide Plan outlined a strategy to revitalize and redevelop the Everett Downtown area. To further this effort, in 2006, the City of Everett adopted a Downtown Plan, a Subarea Plan and corresponding implementing development regulations.

Petitioner challenged the City's adoption of the Downtown Plan and implementing regulations, asserting that the height limits and floor area ratios in the Downtown Plan and zoning would yield low-rise structures that were inconsistent with provisions in the Citywide Plan for the City's Central Business District.

The Board noted that the City identified several overlapping areas as "Central Business District" for different purposes, and encouraged the City to employ distinct terms for the different areas to avoid confusion. Nonetheless, in reviewing the challenged Downtown Plan and implementing regulation provisions with the relevant Citywide Plan Policies, the Board found no inconsistencies. The Board concluded that the City of Everett's actions were not clearly erroneous and complied with the challenged provisions of the GMA.

I. BACKGROUND[1]

In September of 2006, Petitioner F. Robert Strahm filed a timely petition for review (**PFR**) challenging the City of Everett's adoption of a Downtown Plan, Downtown Zoning Map and Amended Zoning Regulations. Petitioner posed three issues in his PFR,

[1] The complete Procedural History in this case is found in Appendix A.

two challenging whether the Downtown Ordinances accommodated growth, and one asserting that the Downtown Plan and regulations were inconsistent with Everett's Citywide Comprehensive Plan. The prehearing order (**PHO**) setting the schedule and framing the Legal Issues to be decided was issued in November 2006.

There were no motions to supplement the record, but the City moved to dismiss two of the Legal Issues stated in the PHO. In December 2006, the Board granted the City's motion, and Legal Issues 1 and 2 [challenging whether the Downtown Ordinances accommodated growth] were dismissed with prejudice.

In January 2007, the Board received timely briefing from the parties. In this Final Decision and Order, Petitioner Strahm's Prehearing Brief is referred to as **Strahm PHB** and the City's Response Brief is noted as **Everett Response**. Petitioner Strahm did not file a Reply Brief.

On February 8, 2007, the Board held a hearing on the merits (**HOM**) at the Attorney General's Training Room (Chief Sealth Room), 800 5th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, David Earling and Margaret Pageler were present for the Board. Petitioner F. Robert Strahm appeared *pro se*. Respondent City of Everett was represented by Eric S. Laschever. Moani Russell, Board Extern, was also present. Also attending the HOM were Frank Strahm, Allen Giffen and Jim Hanson. Court reporting services were provided by Shelly Hoyt CCR, of Byers and Anderson. The hearing convened at 10:00 a.m. and adjourned at approximately 11:00 a.m.

At the HOM, the Board requested color copies of certain figures (Housing Strategy Areas) from the City of Everett's Housing Element and a copy of the Everett Metropolitan Center map [Figure 3.] with street names indicated. On February 14, 2007, the Board received the requested materials. Additionally, on February 16, 2007, the City submitted a motion to supplement the record with a composite map showing the Everett Metropolitan Center Overlaid on the Housing Strategy Areas. Both maps are part of the record, and Petitioner Strahm did not object to the submittal.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the legislature directed the Boards to hear and determine whether the challenged actions were in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). See *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn 2d 488, 139 P.3d 1096 (2006) ("The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations").

Petitioners challenge the City of Everett's adoption of Ordinance Nos. 2921-06, 2922-06 and 2923-06, adopting a Downtown Plan and implementing regulations. Pursuant to RCW 36.70A.320(1), these Ordinances are presumed valid upon adoption.

The burden is on Petitioner Strahm to demonstrate that the actions taken by the City of Everett are not in compliance with the goals and requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [the City of Everett] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Everett's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to the City of Everett in how it plans for growth, provided that its planning actions or policy choices are consistent with, and comply with, the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

The *Quadrant* decision is in accord with prior rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board* (***King County***), 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). As the Court of Appeals explained, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15, 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240 (2005). And *see*, most recently, *Lewis County*, 157 Wn 2d 488, 139 P.3d 1096 at fn. 16: "[T]he GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds."

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION and PRELIMINARY MATTERS

A. BOARD JURISDICTION

The Board finds that Petitioner Strahm's PFR was timely filed, pursuant to RCW 36.70A.290(2); Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinances, pursuant to RCW 36.70A.280(1)(a).

B. PRELIMINARY MATTERS

Oral Rulings at the HOM and Post HOM Rulings:

At the HOM, the Board took **official notice** of, and allowed the City of Everett to refer to, demonstrative exhibits (mounted display-sized maps and figures) depicting: 1) the City's *current* zoning map (**HOM Ex. 1**); 2) Map #22-1 illustrating the Downtown Plan area and the height limits and floor area ratio (**FAR**) requirements for eight different areas within the Downtown Plan area (Ordinance No. 2921-06, Downtown Plan, Figure 40, at 56; and Ordinance No. 2923-06, Zoning Code Amendments, 19.22.02 B and C of the EMC, Map #22-1); 3) the City's *prior* zoning map for the downtown area, showing height (**HOM Ex. 2**); 4) an artist's renderings showing typical structures designed with a FAR of 4.6, 3.5 and 1.5 (City Response Brief, included in attached Ex. 8).

The Board also **grants** the City's motion to supplement the record filed on February 16, 2007 regarding the Composite map showing the Everett Metropolitan Center map as an overlay on Housing Strategy Areas maps– **HOM Ex. 3**. This exhibit clarifies the relationship between these maps.

IV. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NO. 3[2]

The Board's PHO set forth Legal Issue No. 3:

> 3. *Did the City of Everett otherwise fail to comply with RCW 36.70A.040, RCW 36.70A.070 and RCW 36.70A.080 [re: subarea plan consistency] also requiring internal consistency and regulations to implement the Plan, when it adopted the Challenged Downtown Plan provisions? [Intended to encompass Issue D and E, PFR, at 4.]*

[2] Legal Issues 1 and 2 were dismissed with prejudice in the Board's December 14, 2006 Order Granting Dispositive Motion.

The Action Challenged

In 2005, the City of Everett completed its Plan Update, revising its Comprehensive Plan. (Hereafter, **Citywide Plan**). The Citywide Plan contained the required Land Use Element and Housing Element, including Housing Strategy Areas, which provide the context for the Citywide Plan in the present appeal. In 2006, the City of Everett adopted a Downtown Plan, a Subarea Plan, and corresponding implementing development regulations. (Hereafter, **Downtown Plan**.)

Petitioner challenges the City's adoption of the Downtown Plan and implementing regulations. In the Downtown Plan, Petitioner challenges Policy L-2(c) and (d) and Figure 40. In the implementing regulations, Petitioner challenges a zoning map showing height and floor area ratios (**FAR**) – Map 22-1 and sections 19.22.020.B and 19.22.020.C of the Everett Municipal Code (**EMC**). Petitioner alleges these provisions are inconsistent with provisions of Everett's Citywide Plan. *The focus of Petitioner's challenge relates to the building height limitations and FAR requirements in the Downtown Plan area*. Generally, Petitioner asserts that the Downtown Plan and regulations governing height and FARs are inconsistent with and do not implement the Citywide Plan.

The challenged Downtown Plan Policies, Figures and Maps and the challenged implementing regulations are set forth in full in **Appendix B**. The applicable Citywide Plan Policies (Land Use Element and Housing Element), Figures and Maps are set forth in full in **Appendix C**.

Applicable Law

Plan consistency, and regulations that implement the Plan, are required in numerous provisions of the GMA. As a GMA Planning City, Everett is required to "adopt a comprehensive plan under [the GMA] and development regulations that are consistent with and implement the comprehensive plan." RCW 36.70A.040(3)(d). The GMA also requires that Everett's "plan shall be an internally consistent document and all elements shall be consistent with the future land use map [**FLUM**]." RCW 36.70A.070(preamble). Additionally, "a comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan." RCW 36.70A.080(2).

As applied to the present matter, the GMA requires that the City of Everett's Downtown Plan (an undisputed subarea plan) be consistent with its Citywide Comprehensive Plan Policies and FLUM and the Downtown Plan regulations be consistent with and implement the Downtown Plan.

In one of its earlier cases, the Board defined "consistency" to mean that:

> [Plan] provisions are compatible with each other – that they fit together properly. In other words, one provision may not thwart another. However, the Board also finds that consistency can also mean more than one policy not being a road block for another, it can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal.

West Seattle Defense Fund v. City of Seattle (***WSDF I***), CPSGMHB Case No 94-3-0016, Final Decision and Order, (Apr. 4, 1995), at 27. The Board continues to abide by this definition.

Discussion

Position of the Parties:

In briefing, Petitioner Strahm identifies Citywide Plan Policies that he contends articulate a strategy for encouraging development and redevelopment in the Everett's Central Business District and Downtown area that require high-rise, and in some cases mid-rise, development throughout the area. Contrary to this Citywide Plan strategy encouraging high and mid-rise development, Strahm asserts that the Downtown Plan and implementing regulations permit low-rise development in the Central Business District (**CBD**) since these provisions allow *lower* building height limits and include more restrictive FARs than had previously existed. Consequently, according to Petitioner, the Downtown Plan and implementing regulations are inconsistent with and do not implement the Citywide Plan. Strahm PHB, at 1-12.

Specifically, Petitioner asserts the following:

- The challenged Downtown Plan policies and implementing regulations foster low-rise development and thwart redevelopment in the CBD. (*Id*. at 6.);
- Permitting low-rise development, with a FAR of 1.5 in the Downtown Plan area, thwarts mid-rise and high-rise development in the CBD. (*Id*. at 10-12).

At the HOM, Petitioner concisely summarized his challenge:

> The crux of my argument here is that the floor area ratio of 1.5 is inconsistent with the City's comprehensive plan, which calls for a minimum floor area ratio of three [3] for the CBD, and the subarea plan's [Downtown Plan and regulations] 1.5 FAR in three areas [North, South and Far West] is inconsistent.

HOM Transcript, at 6.

The City responds that Petitioner erroneously "equates the downtown area with the CBD. . . . [T]he downtown area is larger than the CBD as that term is used in the

Comprehensive Plan." Everett Response, at 2. The City explains that the CBD, as that term is used in the Housing Element, is a discrete area within the Downtown Plan; and that the Downtown Plan area includes areas from the Housing Element [Housing Strategy Areas] that are identified as the following: 1) the CBD; 2) part of the West Slope area; 3) part of the North Downtown area; and 4) a small portion of the South [or Multifamily Neighborhood Infill] area. *Id*. at 2-4. The City further explains that Figure 40 [and Map #22-1] divides the entire Downtown Plan area into 8 different areas. The Housing Element Strategy Areas (in **bold**) encompass these 8 different areas as shown on Figure 40 and Map #22-1:

- **CBD** = [Colby] Ridge, North East, and South East.
- **West Slope** = Near West, West and Far West
- **North Downtown** = North
- **South or Multifamily Neighborhood Infill** = South

Id. at 4-5.

Everett contends that the Downtown Plan is the subarea plan anticipated in the Citywide Plan and its development is based upon numerous studies and a market driven strategy to foster redevelopment in the Downtown area – a strategy that was found compliant by the Board in *Strahm v. City of Everett* (***Strahm II***), CPSGMHB Case No. 05-3-0042, Final Decision and Order, (Sep. 15, 2006). *Id*. at 6-10. The City notes that Petitioner does not contest that the Downtown Plan and implementing regulations clearly permit outright mid-rise and high-rise development. *Id*. at 10-11.

Everett contends that Petitioner's primary argument is that the new Downtown Plan and implementing regulations allow lower height limits and have different FARs than were previously permitted. This comparison, the City argues, is irrelevant because the new regulations, while different than the old, implement the *new* Downtown Plan and are consistent with the Citywide Plan. The City acknowledges that while the new regulations allow some height limits to be decreased, others are increased and bonuses are provided to allow even higher structures in order to foster redevelopment. This, the City asserts, is consistent with and implements the Downtown Plan and the Citywide Plan. *Id*. at 11-12.

Everett also argues that allowing an 80' building in some areas is not low-rise development, but rather a smaller high-rise development. *Id.* at 12-13. Lastly, the City suggests that while an FAR of 1.5 may yield low-rise development, it is limited to the fringes of the Downtown Plan area and not permitted in the Ridge, Near West, South East, West, or North East portions of the Downtown Plan area which center on the CBD. This approach, the City asserts, is not contrary to the Citywide Plan. *Id*. at 13-14.

Board Discussion:

The Downtown Plan and Citywide Plan – general provisions

It is undisputed that the Downtown Plan adopted by Ordinance No. 2921 is a Subarea Plan. In discussing Subarea Plans, the Board has stated:

> Subarea Plans are neither defined nor required by the GMA; Subarea Plans are an optional element that a jurisdiction may include in its GMA Plan. RCW 36.70A.080(2). All that can be inferred from the statute, and prior Board cases, is that Subarea Plans are, as the pre-fix "sub" implies, subsets of the Comprehensive Plan of a jurisdiction. *Additionally, Subarea Plans typically augment and amplify policies contained in the jurisdiction-wide Comprehensive Plan*.
>
> Thus, Subarea Plans are, in effect, portions of Comprehensive Plans. Like Comprehensive Plans, Subarea Plans are land use policy documents that purport to guide land use decision-making and they must be adopted in compliance with the goals and requirements of the Act.

Laurelhurst Community Club, Friends of Brooklyn, University District Community Council, Northeast District Council and University Park Community Club v. City of Seattle [University of Washington – Intervener] (***Laurelhurst I***), CPSGMHB Case No. 03-3-0008, Order on Motions, (Jun. 18, 2003), at 8, (emphasis supplied).

Applying RCW 36.70A.080(2) and *Laurelhurst I* to the present case, we can conclude that the Downtown Plan and Everett's Citywide Plan must be consistent – not thwart each other and must work together to achieve a common goal – and the Downtown Plan may augment and amplify or refine provisions in the Citywide Plan.

The introductory text in the Land Use Element of the Citywide Plan recognizes that the character of Everett's Downtown Core "epitomizes the mixed-use activity center" and it acknowledges the challenges and opportunities facing the City in spurring development and redevelopment in the area. Thus, the City commits to the development and adoption of a Downtown Subarea Plan to revitalize the Downtown Core. *See* Ex. 1, Citywide Plan, Land Use Element, at 16, 17-18, and CBD Policy 2.4, at 27; *see also* Appendix C. The Board concludes that the adoption of Ordinance Nos. 2921, 2922, and 2923 fulfill these commitments. Generally, the Downtown Plan augments, amplifies and refines provisions in the Citywide Plan; and the two documents work together to achieve the common goal of revitalizing the Everett Downtown Core.

The Citywide Plan's CBD Policy 2.4 notes that the CBD policies call for a variety of uses that are designed to encourage redevelopment with office, governmental, retail, professional services, and residential uses. CBD Policy 2.4.1 also parrots this desire for a rich mix of uses and high-density housing. *Id*. at 27. The Citywide Plan also contains a policy pertaining to building intensities which notes that building bulk, height, lot coverage and FARs influence development and that current [B-3] zoning should be periodically revised to implement the Citywide Plan. Again, the adoption of Ordinance Nos. 2921, 2922 and 2923 fulfill these policy commitments and do not present any

inconsistencies between the Citywide Plan and the Downtown Plan and implementing regulations. The Board concludes that both Plans appear to be designed to work together to accomplish the City's redevelopment and revitalization goal for the Downtown Core. Nonetheless, Petitioner Strahm has challenged the City's Downtown Plan and implementing regulations as being inconsistent with the Citywide Plan. The Board now turns to the specific complaint of Petitioner Strahm.

Everett's CBDs

As noted *supra*, Petitioner succinctly stated his argument at the HOM:

> The crux of my argument here is that the floor area ratio of 1.5 is inconsistent with the City's comprehensive plan, which calls for a minimum floor area ratio of three [3] for the CBD, and the subarea plan's [Downtown Plan and regulations] 1.5 FAR in three areas [North, South and Far West] is inconsistent.

HOM Transcript, at 6. The City, in briefing and at the HOM, contended that Petitioner has mistakenly equated the Downtown Plan area with the CBD, thereby confusing and misinterpreting the City's Plan and regulations. To resolve this issue requires an understanding of "Everett's CBD." There appears to be more than one description of Everett's CBD in the Citywide Plan and the Downtown Area Plan.

First, the Citywide Plan's Land Use Element includes Policy 2.11.9, pertaining to Urban Centers, which addresses the following: a Metropolitan Center, Growth Centers, Activity Centers and Manufacturing/Industrial Centers. *See* 1, at 42-43. Urban Center Policy 2.11.9(a) states,

> The Everett *Central Business District* is the metropolitan center for Snohomish County. [Figure 3. is referenced, which is a map of the Everett Metropolitan Center.] The boundary contains **approximately 475 acres** gross land area (including rights-of-way). It is intended to be the focus of intensive mixed-use development with high-density housing, various types of employment, and cultural activities, served by the regional high capacity transit system.

Id.

This 475-acre version of the CBD extends from approximately Terminal Avenue on the west to Virginia Avenue on the east, and from 24th Street on the north to 34th Street on the south. *Id.*[3]

[3] The City's February 13, 2007 submittal to the Board of requested color copies of various Housing Strategy Areas included a copy of Figure 3 showing the Metropolitan Center – CBD, which called out street names on the margins. Based on this map, the Board generalized the extent of the Metropolitan Center.

Second, the Downtown Plan describes the area encompassed in its planning area as,

> Downtown Everett is the financial, governmental, and cultural center of both the City and Snohomish County. The area referred to as "downtown" in this plan follows the proposed boundaries of the expanded *Central Business District* Zone (B-3) zone. This area encompasses **approximately 190 acres**.

Ordinance No. 2921, Downtown Plan, at 13.

Additionally, Exhibit 2 of the same Ordinance shows the City of Everett Downtown Plan - Comprehensive Plan Classifications – which classifies this same 190-acre area as the *Central Business District*.

This 190-acre version of the CBD extends from approximately Terminal Avenue on the west to Broadway on the east, and from Everett Avenue on the north (except for a small area that extends north to 25th Street) to Pacific Avenue on the south (except for a small area that extends south to 32nd Street). The Downtown Plan's 190-acre area falls within the 475-acre CBD described in the Land Use Element and is less than half the size, and almost as wide, measuring east and west, but much shorter measuring north and south.

Third, the Citywide Plan's Housing Element identifies an area as the *Central Business District.* *See* Ex. 2, at 26, and Appendix C. This version of the CBD appears to be **approximately 100 acres** and extends from Hoyt Avenue on the west to Broadway on the east, and from Everett Avenue on the north to Pacific Avenue on the south. The Housing Element's 100-acre CBD falls within the boundaries of Downtown Plan's 190-acre CBD, but is narrower measuring east and west, and measures about the same north to south.

Thus, the Citywide Plan and the Downtown Plan identify three differently-sized, but overlapping, areas as the CBD. If, as the City suggests, Mr. Strahm has "erroneously equated the downtown area for the CBD," the Board can empathize with Mr. Strahm. The Citywide Plan discusses the 475-acre Metropolitan Center as a *CBD* as well as a smaller 100-acre *CBD* in the Housing Element. The Downtown Plan identifies another 190-acre area as a *CBD*, and the corresponding zoning map B-3 designation is also termed the *CBD*. The Board understands the basis for confusion.[4] It would be prudent for the City to identify these three different areas with different terminology [*e.g.* the Metropolitan Center (475-acre area), Central Business District (the 190-acre area) and Downtown Core (100+/- acre area described in the Housing Element)]. To do so would avoid the possibility of misunderstanding and confusion that can occur when the City discusses its CBD.

[4] At the HOM, even the City acknowledged that there is "a potential inconsistency between Figure 3 in the Land Use Element, and the specific directives in the housing element." HOM Transcript, at 43.

However, having parsed through the background and descriptive text in the Citywide and Downtown Plans, the Board believes it understands the distinctions the City is making between these areas. As the Board understands it, the Metropolitan Center is a rather generic label that encompasses most of the City's commercial (excluding corridors) and higher-density residential use *areas*. The 190 acres identified in the Downtown Plan represents the *area* where the City desires to focus its redevelopment and revitalization efforts. The City's B-3 zoning governs the *uses* permitted within this 190-acre Downtown Plan area. And the smaller Housing Strategy Area "CBD," as well as several other Housing Strategy Areas, provide guidance for *bulk, height, FARs* and other design features pertaining to the City's desired downtown profile.

Varying Height and FARs – Old and New

It appears to the Board that the Petitioner viewed the 190-acre area as "the CBD," simply because the Downtown Plan and zoning identified the area as such, and any development in the area would proceed according to the B-3 zoning designation. While it is correct that the B-3 zoning governs the *uses* permitted in the 190-acre area, the City chose to vary the *height* and *FARs* within this B-3 zoning designation. To do this, the City adopted Figure 40 in the Downtown Plan and Map #22-1 in the zoning map and text amendments. These two maps (Figure 40 and Map #22-1) are identical in their depiction of height and FARs. *See* Core Document 1, at 56 and Core Document 3.

Petitioner Strahm argued that the new B-3 zoning height designations are different than prior B-3 zoning provisions; noting that the heights were lower and FARs were not previously included. Strahm PHB, at 8. This is correct, but this change does not amount to a *consistency* flaw in the City's Plans or regulations. In fact, the Citywide Plan Land Use Policy 2.13.1 anticipates the need to "periodically revise" the zoning code to "implement the land use concepts desired." This is precisely what the City did. Additionally, the height and FAR restrictions the City adopted do not run afoul of the GMA or the common law pertaining to zoning since they apply equally to each of the eight areas within the B-3 zone depicted on Figure 40 and Map #22-1. Further, the City is explicit in expressing the intent for the variation in *height* and *FAR* as being necessary to accomplish the "wedding cake" height profile the City refers to in L-2(c),[5] a provision challenged by Petitioner.

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[5] Downtown Plan Policy L-2(c) provides, in relevant part:

> c. Maximum Height: Establish maximum building heights as indicated in Figures 38 and 40. *This proposal continues to emphasize the wedding cake approach*, with the ridge-top along Colby having the tallest buildings. Rather than unlimited heights, the proposal caps the height at 200 feet. *Heights step downward each block towards the west more gradually than the current regulations*. Buildings up to 100 feet tall would be allowed under this proposal west of the alley between Grand Avenue and Rucker Avenue as opposed to the current 80 feet current height limit. The proposed heights in this Northeast are substantially lower than existing limits (from as high as 200 feet down to 80 feet in the existing proposal). *The intent here is to encourage*

The 1.5 FARs and the "CBD"

The Board agrees that all eight areas identified in the Downtown Plan and zoning designation are within the B-3 zone and are noted as "CBD" on the Plan map and zoning map. However, as argued by the City, provisions of the Housing Strategy Areas influenced the City's approach to developing the different height and FAR requirements that apply to the different locations in the B-3 zone.

The following "Illustrative Table 1," derived from Figure 40 and Map #22-1, shows the maximum heights and *FARs* for the eight different areas in the Downtown B-3 Zone.

"Illustrative Table 1"
Areas in the Downtown B-3 Zone

Downtown Plan Area	Max Height	FAR Range
Far West	45', 65' and 80'	FAR: 1.5 - 4
West	100'	FAR: 3 - 5
Near West	150'	FAR 3 - 7
[Colby] Ridge	200'	FAR: 3 - 12
Southeast	150'	FAR: 3 - 6
Northeast	80'	FAR: 3 – 4
South	80'	FAR: 1.5 – 4
North	80'	FAR: 1.5 – 4

Derived from Core Document 1, Figure 40, at 56; and Core Document 3, Map #22-1.

As the City explained in its brief, the Housing Element Strategy Areas (in **bold**) encompass the following areas on Figure 40 and Map #22-1 – the maps depicting height and FAR requirements:

- **CBD** = [Colby] Ridge, North East, and South East.
- **West Slope** = Near West, West and Far West
- **North Downtown** = North
- **South or Multifamily Neighborhood Infill** = South

Everett Response, at 4-5.

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low to mid-rise construction, which is more realistic economically, and would fit well into the context of the area.

The full text of Policy L-2(c) and (d) is contained in Appendix B.

The following "Illustrative Table 2," derived from Figure 40, Map #22-1 and the Citywide Plan's Housing Element provisions, includes the information from "Illustrative Table 1" *supra*, and adds the Housing Element Housing Strategy Areas. The FARs of 1.5 are shaded along with the corresponding Housing Strategy Area.

"Illustrative Table 2"
Areas in the Downtown B-3 Zone

Housing Element Housing Strategy Areas	**Downtown Plan Area (B-3 Zone)**	**Height**	**FAR Range**
West Slope	Far West	45', 65' and 80'	**FAR 1.5**-4
"	West	100'	FAR 3-5
"	Near West	150'	FAR 3-7
CBD	[Colby] Ridge	200'	FAR 3-12
"	South East	150'	FAR 3-6
"	North East	80'	FAR 3-4
Multifamily Neighborhood Infill (South)	South	80'	**FAR 1.5**-4
North Downtown	North	80'	**FAR 1.5**-4

As Petitioner asserts, the Board notes that the CBD Housing Strategy Area does provide for a minimum FAR of 3.0. The minimum 3.0 FAR applies to the three distinct Figure 40/Map #22-1 areas of [Colby] Ridge, South East, and North East. It also applies to the West and Near West portions of the West Slope Housing Strategy Area. However, *the minimum FAR of 3.0 does not apply* to the Far West portion of the West Slope Housing Strategy area, the North (North Downtown Housing Strategy Area) or the South (Multifamily Neighborhood Infill Housing Strategy) area noted in gray highlighting.

In these three locations, the 1.5 FAR applies and is purportedly tied to the Housing Strategy Area provisions of the Citywide Plan. Thus, Petitioner's assertion that the 3.0 FAR applies *throughout* the 190-acre Downtown Plan area is incorrect. Petitioner may believe that it should be applicable, but the City has chosen otherwise, and this choice is within the City's discretion. It is not clearly erroneous for the City to have chosen to apply a 1.5 FAR in the Far West, South and North areas of the Downtown B-3 zoning area to foster the desired profile in its redevelopment efforts.

Is a 1.5 FAR inconsistent with the Citywide Plan?

Petitioner contends that the 1.5 FAR yields low-rise development, not mid-rise to high-rise as called for by the "CBD." Strahm PHB, at 1-12; HOM Transcript, at 6 -12, 33-38.

Are the 1.5 FARs for these areas inconsistent with the vision and desired development types for the corresponding Citywide Housing Strategy Areas?

It is important to note that neither Petitioner nor the City dispute the fact that a FAR of 1.5 typically yields a "low-rise" structure. The Citywide Plan's Housing Element provides guidance as to what constitutes a "low-rise" structure.

> **Low-rise** (3 over 1), 3 floors of residential over retail/office or parking. Site area of 6,000 square feet (**SF**) and up; Density of 30 – 70 dwelling units per acre (**du/ac**); Unit Size of 600 – 1,200 SF (studio to 2 bedroom); and FAR of 1.5 to 2.5.

Strahm PHB, Ex. 2, at 53.

The City provides an alternative configuration of a 1.5 FAR, suggesting that it would yield 4 stories residential over 2 stories of mixed use. *See* Everett Response, Ex. 8. In either scenario, 3 or 4 floors of residential would likely yield a density range between 30 – 70 dus/ac. Therefore, the Board concludes that there is no question that, although such a structure may be *low-rise*, it would provide for *high residential densities*, and would be consistent with the "high density housing" called for in Citywide Plan Land Use Policies 2.4.1 and 2.11.9. Ex. 2, at 27 and 42-43, respectively; *see also* Appendix C.

Nonetheless, the question remains – Is a 1.5 FAR,[6] which yields low-rise structures, inconsistent with the relevant Housing Strategy Areas identified in the Citywide Plan? To answer this question, the Board turns to the Vision and Desired Development Types set forth for each challenged Housing Strategy Area.

Consistency of Low-rise structures in the relevant Housing Strategy Areas

For the **West Slope** area, the Vision and Desired Development Types are stated as follows:

> *Vision*:
>
> *A mix of low- and mid-rise residential, and mixed-use development in a pedestrian-oriented neighborhood setting*. Mixed-use structures with ground floor commercial or office uses are encouraged.
>
> *Desired Development Types*:

[6] The Board notes that the challenged FAR is a *minimum* FAR within a range, and that through the use of various design features, additional FAR/height may be obtained. However, Petitioner Strahm did not challenge or argue the bonus features of the Downtown Plan and zoning, just the minimum FARs.

- Residential towers with permitted non-residential uses on the ground floor, where viable.

- Mid-rise residential development (4-6 stories) with permitted non-residential uses on the ground floor, where viable.

- Mid-rise office or clinic with commercial on the ground floor, where viable.

- While heavy commercial and light industrial uses may be phased out over time, current regulations should allow them to stay.

Ex. 2, at 34-35; and HOM Ex. 3, (*italics* in original, underlining supplied).

The City's vision for the West Slope area speaks to a mix of low-rise and mid-rise residential and mixed-use development. The desired development type calls for 4-6 stories (*albeit* described as mid-rise development[7]). The Board finds **no inconsistencies** between the 1.5 FAR for the Far West area [Figure 40 and Map #22-1] and the Housing Strategy Area Policies for the West Slope area.

For the **Multifamily Neighborhood Infill (South)** area, the Vision and Desired Development Types are stated as follows:

> *Vision*:
>
> *A mix of compact single-family residential, low- and mid-rise residential, and mixed-use development in a pedestrian-oriented neighborhood setting*. Mixed-use structures with ground floor commercial or office uses are emphasized on blocks closer to the CBD and along commercial corridors, including Colby Avenue and portions of Rucker Avenue. Streetscapes and parks foster a strong sense of neighborhood.
>
> *Desired Development Types*:
>
> - Mid-rise residential development (4-6 stories) with office, medical, or commercial on the ground floor on designated arterials, such as Pacific, Colby, and Rucker Avenues.

[7] The Housing Element also describes mid-rise development: **Mid-rise** (5 over 1 or 4 over 1), 4 or 5 floors of residential over retail/office with underground parking. Site area of 6,000 SF and up; Density of 60 – 120 du/ac; Unit Size of 600 – 1,200 SF (studio to 2 bedroom); and FAR of 3.0 to 4-0. *See* Ex. 2 at 54.

- *Low-rise* residential (2-3 stories) with office, medical or commercial on the ground floor on designated arterials, such as Pacific, Colby, and Rucker Avenues or office overlay areas.

- Compact single-family residential development, duplexes, townhouses, and accessory dwelling units.

Ex. 2, at 29-30; and HOM Ex. 3, (*italics* in original, underlining supplied).

The City's vision for the Multifamily Neighborhood Infill (South) area speaks to a mix of single-family as well as low- and mid-rise residential development and mixed-use development. The desired development type calls for 2-3 stories (low-rise) or 4-6 stories. The Board finds **no inconsistencies** between the 1.5 FAR for the South area [Figure 40 and Map #22-1] and the Housing Strategy Area Policies for the Multifamily Neighborhood Infill area.

For the **North Downtown** area, the Vision and Desired Development Types are stated as follows:

> *Vision*:
>
> *A mix of low-and mid-rise residential uses with mixed-use development focused on commercial streets. Because of its proximity to the CBD, open spaces, and schools, the North Downtown area offers the opportunity to be a pleasant, in-city neighborhood.*
>
> *Desired Development Types*:
>
> - Low to mid-rise residential development (2 to 6 stories) with office, medical, or commercial on the ground floor where permitted and viable.

Ex. 2, at 39-40; and HOM Ex. 3, (*italics* in original, underlining supplied).

The City's vision for the North Downtown area speaks to a mix of low and mid-rise residential uses and mixed-use development. The desired development types call for 2-6 stories of residential development (low-rise). The Board finds **no inconsistencies** between the 1.5 FAR for the North area [Figure 40 and Map #22-1] and the Housing Strategy Area Policies for the North Downtown area.

To summarize, the Downtown Plan area consists of 190 acres which is all zoned B-3. The B-3 zoning designation is denoted as "Central Business District" and it governs the permitted *uses* throughout the entire 190-acre Downtown Plan area. However, the B-3 zoning designation has been divided into eight separate areas for purposes of regulating *heights and FAR*. These separate designations are to encourage a tiered or wedding-cake

profile in the City's downtown revitalization and redevelopment efforts. The basis for the different heights and FARs within the B-3 zone is found in the Citywide Plan's Housing Element which identifies different Housing Strategy Areas. Within each Housing Strategy Area, a specific strategy is set forth including a vision and desired development types. These provisions provide guidance to the desired height and FARs to achieve the sought-after development.

The Board's review of these relevant provisions leads the Board to conclude that the challenged provisions of City of Everett's Downtown Plan and implementing development regulations are not inconsistent with the Land Use or Housing Element provisions in the Citywide Plan. Therefore, **the City of Everett's adoption of the Downtown Plan and implementing development regulations was not clearly erroneous and complies with RCW 36.70A.040, .040 and .080.**

Conclusion

The Board finds and concludes that the City of Everett's adoption of Ordinance Nos. 2921-06, 2922-06 and 2923-06, pertaining to the Downtown Plan and implementing regulations, was **not clearly erroneous** and **complies** with the consistency requirements of RCW 36.70A.040(3), .070 and .080.

B. INVALIDITY

Having found that the City of Everett's adoption of Ordinance Nos. 2921-06, 2922-06 and 2923-06 **comply** with RCW 36.70A.040(3), .070 and .080, the Board need not address invalidity.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- The City of Everett's adoption of Ordinance Nos. 2921-06, 2922-06 and 2923-06, pertaining to the City's Downtown Plan and implementing development regulations, was **not clearly erroneous** and **complies** with the consistency requirements of RCW 36.70A.040(3), .070 and .080.

So ORDERED this 15th day of March, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

David O. Earling
Board Member

_____

Edward G. McGuire, AICP
Board Member

_____

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.[8]

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[8] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX A

Procedural Background

A. General

On September 29, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from F. Robert Strahm (**Petitioner** or **Strahm**). The matter was assigned Case No. 06-3-0033. Board member Edward G. McGuire is the presiding officer (**PO**) in this matter. Petitioner challenges the City of Everett's (**Everett** or the **City**) adoption of Ordinance Nos. 2921-06, 2922-06 and 2923-06, enacting the City's Downtown Plan – Subarea Plan. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On October 2, 2006, the Board issued a "Notice of Hearing" in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On November 2, 2006, the Board held the PHC, and on November 6, 2007, the Board issued a "Prehearing Order" setting the schedule and Legal Issues[9] for this case.

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[9] Petitioner lists six Legal Issues in the PFR; three have "sub issues" included. *See* PFR, at 1-4, Legal Issues A - F. Each issue statement challenges the same provisions of the City's Downtown Subarea Plan, and development regulations, specifically:

1) Downtown Subarea Plan – Land Capacity Analysis, chapter 6

2) *Policy* L-2, c and d – updating provisions of the Downtown Business (B-3) zone;

3) Figure 40 – proposed maximum height and floor area ratios for the proposed B-3 zone;

4) Everett Municipal Code (**EMC**) 19.22.020 B and C – Development Standards for the B-3 zone, Height of Building or Structure and Floor Area Ratios

5) Map 22-1 – Maximum Building Heights and Floor Area Ratio Standards for B-3 Zone.

The Board will refer to these portions of the Plan and development regulations collectively as the "**Challenged Downtown Plan provisions**." Additionally, the Board revised and combined the Legal Issues as stated in the PFR as follows:

The first two issues relate to "Accommodating Growth," the third relates to "Consistency of Plans and development regulations."

1) Did the City of Everett fail to provide sufficient land to accommodate projected growth as required by RCW 36.70A.110(2), RCW 36.70A.115 and Snohomish County County-wide Planning Policy CPP UG-14 when it adopted the Challenged Downtown Plan provisions – including the supporting land capacity analysis? [*Intended to encompass Issues A, Ai and Aii; Issues B and Bi and Issue F, PFR, at 1-2 and 4.*]

B. Motions to Supplement the Record and Amend the Index

On November 2, 2006, the Board received "City of Everett 2006 Downtown Plan Record of Index" (**Index**).

On November 7, 2007, the Board received signed copies of Ordinance Nos. 2921-06, 2922-06 and 2923-06, the Downtown Plan, Downtown Plan Zoning Map and amended Zoning regulations, respectively.

There were no motions to supplement the record in this matter.

C. Dispositive Motions

On November 22, 2006, the Board received "Respondent City of Everett's Motion to Dismiss," with one attached exhibit.

On December 5, 2006, the Board received "Strahm's Response to City's Dispositive Motion," with three attached exhibits.

On December 11, 2006, the Board received "Respondent City of Everett's Reply to Strahm's Response to City's Motion to Dismiss."

The Board did not hold a hearing on the motions.

On December 14, 2006, the Board issued its "Order Granting Dispositive Motions." The Order **granted** the City of Everett's motion and **dismissed with prejudice**, Legal Issues 1 and 2. Legal Issue 3 is the sole remaining Legal Issue in this matter.

D. Briefing and Hearing on the Merits

On January 8, 2007, the Board received "Petitioner F. Robert Strahm's Prehearing Brief" (**Strahm PHB**), with four attached exhibits [1-4].

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2) Did the City of Everett's failure to accommodate projected growth, also fail to comply with RCW 36.70A.130 requiring internal consistency and regulations to implement the Plan when it adopted the Challenged Downtown Plan provisions? [*Intended to encompass Issues C and Ci and Cii, PFR, at 3.*]

3) Did the City of Everett otherwise fail to comply with RCW 36.70A.040, RCW 36.70A.070 and RCW 36.70A.080 re: sub-area plan consistency] also requiring internal consistency and regulations to implement the Plan, when it adopted the Challenged Downtown Plan provisions? [*Intended to encompass Issue D and E, PFR, at 4.*]

See PHO, at 7-8.

On January 22, 2007[10], the Board received "Respondent City of Everett's Response to Strahm's Opening Brief" (**Everett Response**), with five attached exhibits [5-9].

As of January 29, 2007, the deadline for filing, the Board had not received a Reply from Petitioner Strahm.

On February 8, 2007, the Board held a hearing on the merits (**HOM**) at the Attorney General's Training Room (Sealth Room), 800 5th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, David Earling and Margaret Pageler were present for the Board. Petitioner F. Robert Strahm appeared *pro se*. Respondent City of Everett was represented by Eric S. Laschever. Moani Russell, Board Extern, was also present. Also attending the HOM were Frank Strahm, Allen Giffen and Jim Hanson. Court reporting services were provided by Shelly Hoyt CCR, of Byers and Anderson. The hearing convened at 10:00 a.m. and adjourned at approximately 11:00 a.m.

On February 14, 2007, the Board received a letter from the City of Everett that attached color copies of certain figures from the City's Housing Element (**HE**) and Land Use Element (**LU**) requested by the Board. Included were the following: Figure 3. Everett Metropolitan Center with street names on the margins (LU, at 43); Figure 1. Housing Strategy Areas [9 areas shown] (HE, at 21); "Central Business District" (HE, at 26); "South" – Multi-family Neighborhood Infill (HE, at 29); "West Slope" (HE, at 34); and "North Downtown" (HE, at 39-40).

On February 16, 2007, the Board received "Respondent City of Everett's Motion to Supplement the Record" with an attached composite map showing the "Everett Metropolitan Center Overlay on Housing Strategy Map." Both maps are part of the record in this proceeding. No objections were lodged against the City's motion to add this exhibit to the record.

[10] On January 23, 2007, the Board received an "Amended" Everett Response with a table of exhibits and tabs for each exhibit. This filing was substituted for the original submittal.

APPENDIX B

Challenged Downtown Plan Policies, Figures and Maps

Petitioner challenges the following components of the City's Downtown Plan and implementing regulations: L-2(c) and (d), Figure 40, Map 22-1 and Everett Municipal Code (**EMC**) 19.22.020(B) and (C).

L-2(c) and (d):

Chapter 6 of the Downtown Plan is entitled "Plan Elements" and identifies the following Plan Elements: Land Use and Development (L), Transportation, Streetscape/Open Space/Public Amenities, and Public Safety. Relevant here is the Land Use and Development Element of the Downtown Plan, which includes four "Proposed Land Use Improvement Actions" as follows:

- L-1. Rezone all of Downtown Core to Downtown Business (B-3);[11]
- **L-2. Update the provisions of the Downtown Business (B-3) Zone**;
- L-3. Revise sign standards for downtown properties; and
- L-4. Conduct Historic Preservation Activities.

Ordinance No. 2921-06, Attached Exhibit 1, Everett Downtown Plan, at 51-70 [hereafter, **Core Document 1**]. Land Use Improvement Action L-2 ["Update the provisions of the Downtown Business (B-3) Zone"] is the focus of Petitioner's challenge. L-2 contains eight provisions:

a. Permitted Uses,
b. Retail Street Designations,
c. Maximum Height,
d. **Floor-to-Area Ratio (FAR)**,
e. Basic Design Standards,
f. Bonus Design Elements,
g. Transfer of Development Rights from Significant Historic Properties, and
h. Transfer of Development Rights from Other Properties.

Core Document 1, at 52-69. Specifically, Strahm targets L-2 (c) and (d) related to height limits and FARs. These provisions state,

> c. Maximum Height: Establish maximum building heights as indicated in Figures 38 and 40. This proposal continues to emphasize the wedding-cake approach, with the ridge-top along Colby having the tallest

[11] This change involved replacing C-1 and C-2 zones on the east and west ends of the downtown core, existing B-3 zone, with the B-3 designation. It substantially enlarged the Downtown area subject to B-3 zoning. *See* Ordinance Nos. 2922-06, Exhibit 1.

buildings. Rather than unlimited heights, the proposal caps the height at 200 feet. Heights step downward each block towards the west more gradually than the current regulations. Buildings up to 100 feet tall would be allowed under this proposal west of the alley between Grand Avenue and Rucker Avenue as opposed to the current 80 feet current height limit. The proposed heights in this Northeast zone are substantially lower than existing limits (from as high as 200 feet down to 80 feet in the existing proposal). The intent here is to encourage low to mid-rise construction, which is more realistic economically, and would fit well into the context of the area.

It is recommended that the buildings be allowed with no height restrictions in the Ridge area and increased up to 50 percent higher than the maximum height limits defined in Figure 40 in other parts of the B-3 zone per all of the following conditions:

- The project is subject to a special review process
- It includes three or more of the bonus design elements defined in Action L-2(f)
- All floors above 40 feet in height are less than 150 feet in width measured in the north-south direction.

d. Floor Area Ratio (FAR): FAR shall be determined by the following calculation: Gross floor area (per current EMC Title 19 definition, but excluding basement, parking, and pubic amenity areas) divided by the lot area.
   - Minimum FAR: 0.75 [i.e. a .75 FAR allows a one-story building covering ¾ of the lot.]
   - Maximum FAR: Establish a maximum FAR as indicated in Table 2. – Table 2. [Table 2 shows that by following *basic design standards* a 3 FAR is allowed (*i.e*. three stories covering the whole lot), but in one geographic area, the FAR is 1.5). If *design bonus elements* are employed, the FAR *generally* ranges from 3 FAR (1 bonus element), 4 FAR (2 bonus elements), up to 12 FAR (3 bonus elements, there is more variance between areas in this category.)].

Core Document 1, at 54-55.

Figure 40:

Figure 40 is a map graphically depicting the Proposed Maximum Height and Floor Area Ratios for the Proposed (and ultimately adopted) B-3 Zone. The eight geographic areas in the Downtown area that are shown in Figure 40 appear to coincide with the single "Central Business District" (**CBD**) designation on the Downtown Plan's Map. *See* Core Document 1, Exhibit 2. Figure 40 appears to illustrate the "wedding cake" height profile the City refers to in L-2(c), *supra*.

The following "Illustrative Table" shows the maximum heights *and* FARs for the eight different areas in the Downtown B-3 Zone.

"Illustrative Table"
Areas in the Downtown B-3 Zone

Downtown Plan Area	Max Height	FAR Range
Far West	45', 65' and 80'	FAR: 1.5 - 4
West	100'	FAR: 3 - 5
Near West	150'	FAR: 3 - 7
[Colby] Ridge	200'	FAR: 3 - 12
Southeast	150'	FAR: 3 - 6
Northeast	80'	FAR: 3 – 4
South	80'	FAR: 1.5 - 4
North	80'	FAR: 1.5 – 4

Derived from Core Document 1, Figure 40, at 56.

Map 22-1:

Map 22.1 is identical to Figure 40 and is incorporated into Ordinance No. 2923-06 amending the City's zoning regulations for the B-3 Zone (hereafter, **Core Document 3**). A similar version of this map, but showing only the height limits for the Downtown areas and noting the existing zones recommended for B-3 zoning, is attached to Ordinance No. 2922 as Exhibit 1 (hereafter, **Core Document 2**). The Board notes that the B-3 zone was substantially enlarged for the Downtown Plan area, to coincide with the Downtown Plan area boundaries.

EMC 19.22.020(B) and (C):

The new B-3 *building height limitations* are codified in EMC 19.22.020(B), which provide,

> 1. Except as otherwise provided by this section, buildings located in the B-3 zone shall be permitted to have a height no greater than indicated on Map 22-1. [*See, supra*.]
> 2. Building height in the B-3 zone is measured as the height above the highest point of any public sidewalk immediately contiguous to the lot upon which the building is proposed to be located.
> 3. Buildings may exceed the height limits indicated on Map 22-1 as follows if approved by the Planning Director, using Process II, as provided herein:
> a. If a project includes 3 or more of the bonus elements listed in Subsection E of this section, it may exceed the height limit:

1) With no maximum height limit in the Colby Ridge (200 feet) area indicated on Map 22-1;
2) By fifty percent of the height limit indicated for all other areas.

b. All floors with a finished floor elevation above 40 feet in height shall be less than 150 feet in width measured in a north south direction.

Core Document 3, at (19) – [The pages are *un*numbered in Ordinance attachment].

The new B-3 FARs are codified in EMC 19.22.020(C), which provides,

> Buildings in the B-3 zone shall be regulated using floor area ratio (FAR) as provided in this section. For purposes of this chapter, floor area ratio is defined as the gross square footage of the building, excluding the basement areas, structured parking, public amenity areas, mechanical equipment rooms or attic spaces with headroom of less than seven feet six inches, outdoor terraces, balconies or open space areas, divided by the lot area.
>
> 1) The minimum FAR for any new building shall be 0.75.
> 2) Maximum FAR shall be as provided in Table 22-1 and Subsection E of this Section. [Table 22-1 is a representation of FARs from Map 22-1; *see also* the "Illustrative Table," *supra*.]

APPENDIX C

Applicable Citywide Plan Policies, Figures and Maps

Citywide Plan Land Use Element:

In the descriptive text of the Land Use Element of the Citywide Plan, the City explains "Everett's Land Use Concept." Activity Centers, Mixed-use Activity Centers, and Mixed-Use Corridors are the principle land use forms discussed. The City notes that it has designated several activity centers, including a "Downtown Core Activity Center" described as follows:

> *Everett's downtown core and surrounding neighborhoods epitomize the mixed-use activity center, and form the largest of the activity centers designated by the Land Use Element.* Although downtown has experienced a serious decline from its earlier position as the major retail center for Snohomish County, many other activities will continue to desire a downtown location. Many recent commercial and residential redevelopment projects in the downtown have begun a reversal of this decline. While downtown will not become the retail center that it once was, it has always been and will continue to be an area where a lot of different activities coexist. Downtown can be viewed as a conglomeration of retail, government, office, services, medical, residential and other miscellaneous activities. The City will complete a subarea plan for the downtown that addresses population, housing and employment targets for the downtown. The plan should be incorporated into the Comprehensive Plan in a future update cycle.

Ex. 1, Citywide Plan, Land Use Element, at 16; (*italicized* language is quoted by Petitioner; *see* Strahm PHB, at 4). The Board notes that the challenged Downtown Plan is the document referred to in the aforementioned background text.

The descriptive text of the Land Use Element also describes the "Challenges of Mixed Use Activity Center Development." This text states,

> There are several challenges for the City to be able to implement the goal of the mixed-use activity center. First is that most areas designated as mixed-use activity centers are located in commercial zones that have previously developed as single-family areas, like shopping centers or office buildings, or as commercial strip areas with a multitude of ownerships and businesses. Integrating a variety of uses, in many cases, will require redevelopment of existing commercial uses. Redevelopment can be quite successful in integrating a mix of uses into a commercial area, or a risky investment. Mixed use requires greater creativity, and also

> greater investment than single-use developments. Redevelopment occurs more slowly than development of vacant land parcels.
>
> Since most of the mixed-use activity centers are located in commercial zones, developers may not consider residential activity as a mix to be viable or marketable. Traditionally, appraisers assigning value based upon "highest and best use" place higher value on commercial potential than on residential. Educating property owners that residential use mixed with commercial can add greater value to the commercial property may help encourage a mix, but it may be necessary to go one or two steps further and *provide greater incentives or even add mandatory requirements to have housing units built into commercial developments.* The City of Seattle has conducted a study evaluating its requirements for mixed-use buildings in neighborhood commercial areas and has found there has been a greater demand for the residential units than for the commercial space.
>
> *Low scale, single story development may not provide the intensity needed to make mixed-use activity centers fulfill their purpose or make them as efficient for the City to provide with urban services. Again, incentives or mandatory bulk and scale requirements may be needed to induce developers to build mixed-use activity centers*.
>
> Transition between mixed-use activity centers and surrounding lower density neighborhoods is important if they are to be successful and enhance the neighborhoods in which they are located. Proper design must be applied in the review process to be certain that these centers are well integrated with adjoining areas. Mixed-use developments must be made attractive to residents to be successful. If they lack the facilities or character that make people wish to live in the area, they will not be successful. Providing quality design and amenities, and a range of services within and near mixed-use developments, will increase the desirability of such developments as a place to live.

Ex. 1, Citywide Plan, Land Use Element, at 17-18; (*italicized* language is quoted by Petitioner; *see* Strahm PHB, at 4).

The Land Use Goals, Objectives and Policies' Section of the Land Use Element lists an "Overall Land Use Goal," "13 Land Use Objectives" and then lists Policies for the following land uses categories: Residential, Commercial, Industrial, Central Business District, Hospital and Clinics, Open Space, Public Facilities, Public Utilities, [Resource Lands], and Other or Hard-to-Site Facilities. The relevant Central Business District Policy – **2.4** – here provides,

> *The City will complete a subarea plan for the downtown that addresses population, housing, and employment targets for the downtown, as well as*

> *policies and regulations for the area. The plan will be incorporated into the Comprehensive Plan in a future update cycle. The Everett Central Business District will experience increased growth and redevelopment. Although the Central Business District has been called out for a land use designation under the commercial land use policies, it is and will continue to be more than just a commercial district. Therefore the Central Business District policies call for a variety of uses. The land use policies encourage (i) redevelopment of the central business district with a variety of office, governmental, retail, professional service, and residential uses; (ii) a vibrant, people-oriented, and intensive downtown setting; (iii) an emphasis on increasing the residential composition of the downtown core; and (iv) improving the public transportation system serving downtown.*

Ex. 1, Citywide Plan, Land Use Element, Policy 2.4 at 27; (*italicized* language is quoted by Petitioner; *see* Strahm PHB, at 5-6.

Central Business District Policy 2.4.1 provides

> Promote Everett's Central Business District as the regional center for governmental, financial, and professional services; cultural activities, supported by <u>high density housing</u>; retail and service businesses in a distinctly urban downtown setting.

Ex. 1, Citywide Plan, Land Use Element, Policy 2.4.1, at 27, (emphasis supplied).

In addition to having policies for different land use categories, the Citywide Plan includes policies for "Specific Geographic Areas." Policy 2.11.9 pertains to Urban Centers, and addresses a Metropolitan Center, Growth Centers, Activity Centers and Manufacturing/Industrial Centers. Policy 2.11.9(a) for <u>Metropolitan Centers</u> provides,

> The Everett Central Business District is the metropolitan center for Snohomish County. [Referencing a map delineating the Metropolitan Center. The Board notes that the Everett Metropolitan Center is larger than the CBD or Map 22-1.] The boundary contains approximately 475 acres gross land area (including rights-of-way). It is intended to be the focus of intensive mixed-use development with <u>high-density housing</u>, various types of employment, and cultural activities, served by the regional high-capacity transit system.

Ex. 1, Citywide Plan, Land Use Element, Policy 2.11.9, at 42-43, (emphasis supplied).

The Citywide Plan addresses building intensities and states,

> The building intensities [i.e. bulk, height, lot coverage, FAR] for [Everett] shall be allowed as currently specified in the Everett Zoning Code. The

> zoning standards shall be evaluated and periodically revised as necessary to implement the land use concepts desired for all portions of [Everett].

Ex. 1, Citywide Plan, Land Use Element, Policy 2.13.1, at 46.

Citywide Plan Housing Element:

The Housing Element of the Citywide Plan describes various housing types and mixed-use structures, noting typical specifications. Pertinent in the present proceeding are the low-rise, mid-rise and high-rise or tower structures. The Citywide Plan describes each as follows:

- **Low-rise** (3 over 1), 3 floors of residential over retail/office or parking. Site area of 6,000 square feet (**SF**) and up; Density of 30 – 70 dwelling units per acre (**du/ac**); Unit Size of 600 – 1,200 SF (studio to 2 bedroom); and FAR of 1.5 to 2.5.

Ex. 2, at 53; and Ex. 8.

- **Mid-rise** (5 over 1 or 4 over 1), 4 or 5 floors of residential over retail/office with underground parking. Site area of 6,000 SF and up; Density of 60 – 120 du/ac; Unit Size of 600 – 1,200 SF (studio to 2 bedroom); and FAR of 3.0 to 4-0.

Ex. 2, at 54; and Ex. 8.

- **High-rise or Residential Tower**, high quality tower with on site amenities; Site area of 24,000 SF and up; Density of 130 – 150 du/ac; Unit Size of 600 – 1,200 SF (studio to 2 bedroom); and FAR of 3.0 to 8.0.

Ex. 2, at 55.

The City relies heavily upon provisions of the Housing Element of its Citywide Plan, specifically the various Housing Strategy Areas. Noted below is the *Vision* and *Desired Development Types* for the following relevant Housing Strategy Areas: Central Business District, Multifamily Neighborhood Infill (South), West Slope, and North Downtown.

Central Business District (CBD)

Vision:

Intense mid-rise and high-rise development with a mix of commercial, office, residential and public uses and pedestrian-friendly streetscapes. Street-front commercial uses will predominate on the ground floor of key commercial streets. Office and residential uses will occupy upper floors on those streets and any floor of secondary streets in the Central

Business District (CBD). The residential population provides 18 hours of activity and supports local services.

Desired Development Types:

- Mid-rise and high-rise residential development (5 to 20 stories) with commercial or office on the ground floor on designated streets.

- Mid-rise and high rise office development (5 to 20 stories) with commercial on the ground floor on designated streets.

Ex. 2, at 26-27; and HOM Ex. 3, (*italics* in original).

Multifamily Neighborhood Infill (South):

Vision:

A mix of compact single-family residential, low- and mid-rise residential, and mixed-use development in a pedestrian-oriented neighborhood setting. Mixed-use structures with ground-floor commercial or office uses are emphasized on blocks closer to the CBD and along commercial corridors, including Colby Avenue and portions of Rucker Avenue. Streetscapes and parks foster a strong sense of neighborhood.

Desired Development Types:

- Mid-rise residential development (4-6 stories) with office, medical, or commercial on the ground floor on designated arterials, such as Pacific, Colby, and Rucker Avenues.

- Low-rise residential (2-3 stories) with office, medical or commercial on the ground floor on designated arterials, such as Pacific, Colby, and Rucker Avenues or office overlay areas.

- Compact single-family residential development, duplexes, townhouses, and accessory dwelling units.

Ex. 2, at 29-30; and HOM Ex. 3, (*italics* in original).

West Slope

Vision:

A mix of low- and mid-rise residential, and mixed-use development in a pedestrian-oriented neighborhood setting. Mixed-use structures with ground-floor commercial or office uses are encouraged.

Desired Development Types:

- Residential towers with permitted non-residential uses on the ground floor, where viable.
- Mid-rise residential development (4-6 stories) with permitted non-residential uses on the ground floor, where viable.
- Mid-rise office or clinic with commercial on the ground floor, where viable.
- While heavy commercial and light industrial uses may be phased out over time, current regulations should allow them to stay.

Ex. 2, at 34-35; and HOM Ex. 3, (*italics* in original).

North Downtown

Vision:

A mix of low-and mid-rise residential uses with mixed-use development focused on commercial streets. Because of its proximity to the CBD, open spaces, and schools, the North Downtown area offers the opportunity to be a pleasant in-city neighborhood.

Desired Development Types:

- Low to mid-rise residential development (2 to 6 stories) with office, medical, or commercial on the ground floor where permitted and viable.

Ex. 2, at 39-40; and HOM Ex. 3, (*italics* in original).